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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

6 || Attorneys for Defendant TIMOTHY T. SIDLEY

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

12 NATIONAL CREDIT UNION  
13 ADMINISTRATION BOARD AS  
14 LIQUIDATING AGENT FOR  
WESTERN CORPORATE FEDERAL  
CREDIT UNION.

15 Plaintiff,

16 || v.

17 ROBERT A. SIRAVO, et al.,

## 18 Defendants.

TIMOTHY T. SIDLEY,

Counterclaimant,

v.

NATIONAL CREDIT UNION  
ADMINISTRATION BOARD AS  
LIQUIDATING AGENT FOR  
WESTERN CORPORATE FEDERAL  
CREDIT UNION.

### Counterclaim Defendant.

27 AND RELATED COUNTERCLAIMS.

Case No. CV10-01597 GW (MANx)

**DEFENDANT TIMOTHY T.  
SIDLEY'S AMENDED ANSWER  
(TO SECOND AMENDED  
COMPLAINT) AND  
COUNTERCLAIMS**

## **DEMAND FOR JURY TRIAL**

Courtroom: 10

Honorable George H. Wu

Defendant Timothy T. Sidley (“Sidley”) hereby responds to the allegations of plaintiff National Credit Union Administration Board as Liquidating Agent for Western Corporate Federal Credit Union’s (“NCUA”) in the Second Amended Complaint, docket no. 116 (the “SAC”), filed on February 22, 2011.

## **JURISDICTION AND VENUE**

6        1. Sidley admits that Western Corporate Federal Credit Union  
7 ("WesCorp") was a credit union with its corporate offices located in San Dimas,  
8 California. Sidley further admits, on information and belief, that WesCorp was  
9 placed into conservatorship by the National Credit Union Administration Board on  
10 March 19, 2009, and that WesCorp was placed into involuntary liquidation on  
11 October 1, 2010. Sidley lacks knowledge or information sufficient to form a belief  
12 as to the truth of the remaining allegations of Paragraph 1 and on that basis denies  
13 those allegations.

14           2. Paragraph 2 contains legal conclusions, to which no response is  
15 required. To the extent the allegations require a response, they are denied.

16           3. Paragraph 3 contains legal conclusions, to which no response is  
17 required. To the extent the allegations require a response, they are denied.

18       4. Paragraph 4 contains legal conclusions, to which no response is  
19 required. To the extent the allegations require a response, Sidley admits that he is a  
20 resident of California and is subject to the personal jurisdiction of this Court and  
21 denies the remaining allegations.

22       5. Paragraph 5 contains legal conclusions, to which no response is  
23 required. To the extent the allegations require a response, they are denied.

## PARTIES

25        6. Sidley admits, on information and belief, that the National Credit  
26 Union Administration Board is the liquidating agent for WesCorp.

27       7. Sidley admits, on information and belief, that Robert A. Siravo  
28 ("Siravo") served as President and CEO of WesCorp. Sidley lacks knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations of  
2 Paragraph 7 and on that basis denies those allegations.

3 8. Sidley admits, on information and belief, that Todd M. Lane ("Lane")  
4 served as Chief Financial Officer of WesCorp. Sidley lacks knowledge or  
5 information sufficient to form a belief as to the truth of the remaining allegations of  
6 Paragraph 8 and on that basis denies those allegations.

7 9. Sidley admits, on information and belief, that Robert J. Burrell  
8 ("Burrell") served as Executive Vice President and as the Chief Investment Officer  
9 for WesCorp. Sidley lacks knowledge or information sufficient to form a belief as  
10 to the truth of the remaining allegations of Paragraph 9 and on that basis denies  
11 those allegations.

12 10. Sidley admits that he served as Vice President for Risk Assessment for  
13 WesCorp starting on or about June 18, 1998 but denies that he served as Vice  
14 President for Risk Assessment for WesCorp through April 2, 2010. Sidley further  
15 admits that he also served as Chief Risk Officer in charge of investment credit  
16 services for WesCorp but denies that he served as Chief Risk Officer beginning  
17 June 18, 1998 – Sidley did not begin serving as Chief Risk Officer until on or about  
18 October 3, 2006. On or about June 9, 2009, Sidley ceased serving as Vice  
19 President for Risk Assessment and as Chief Risk Officer and began serving as Vice  
20 President of Strategic Projects until he retired from WesCorp on April 2, 2010.  
21 Sidley admits that he currently resides in California. The remaining allegations of  
22 paragraph 10 contain legal conclusions to which no response is required. To the  
23 extent the allegations requires a response, they are denied.

24 11. Sidley admits that Thomas E. Swedberg ("Swedberg") was Vice  
25 President of Human Resources and Vice President of Strategic Planning and  
26 Organizational Development. Sidley lacks knowledge or information sufficient to  
27 form a belief as to the truth of the remaining allegations of Paragraph 11 and on that  
28 basis denies those allegations.

1           12. Sidley admits that Robert H. Harvey, Jr. (“Harvey”) was a director and  
2 the Chairman of the WesCorp board of directors. Sidley lacks knowledge or  
3 information sufficient to form a belief as to the truth of the remaining allegations of  
4 Paragraph 12 and on that basis denies those allegations.

5           13. Sidley admits that James P. Jordan (“Jordan”) was a member of the  
6 WesCorp board of directors and was the Vice Chairman of the WesCorp board.  
7 Sidley lacks knowledge or information sufficient to form a belief as to the truth of  
8 the remaining allegations of Paragraph 13 and on that basis denies those allegations.

9           14. Sidley admits that Timothy Kramer (“Kramer”) was a member of the  
10 WesCorp board of directors and served as the Secretary and Treasurer of the  
11 WesCorp board. Sidley lacks knowledge or information sufficient to form a belief  
12 as to the truth of the remaining allegations of Paragraph 14 and on that basis denies  
13 those allegations.

14           15. Sidley admits that Robin J. Lentz (“Lentz”) was a member of the  
15 WesCorp board of directors. Sidley lacks knowledge or information sufficient to  
16 form a belief as to the truth of the remaining allegations of Paragraph 15 and on that  
17 basis denies those allegations.

18           16. Sidley admits that John M. Merlo (“Merlo”) was a member of the  
19 WesCorp board of directors. Sidley lacks knowledge or information sufficient to  
20 form a belief as to the truth of the remaining allegations of Paragraph 16 and on that  
21 basis denies those allegations.

22           17. Sidley admits that Gordon Dames (“Dames”) was a member of the  
23 WesCorp board of directors. Sidley lacks knowledge or information sufficient to  
24 form a belief as to the truth of the remaining allegations of Paragraph 17 and on that  
25 basis denies those allegations.

26           18. Sidley admits that William Cheney (“Cheney”) was a member of the  
27 WesCorp board of directors. Sidley lacks knowledge or information sufficient to  
28 form a belief as to the truth of the remaining allegations of Paragraph 18 and on that

1 basis denies those allegations.

2       19. Sidley admits that Warren Nakamura (“Nakamura”) was a member of  
3 the WesCorp board of directors. Sidley lacks knowledge or information sufficient  
4 to form a belief as to the truth of the remaining allegations of Paragraph 19 and on  
5 that basis denies those allegations.

6       20. Sidley admits that Brian Osberg (“Osberg”) was a member of the  
7 WesCorp board of directors. Sidley lacks knowledge or information sufficient to  
8 form a belief as to the truth of the remaining allegations of Paragraph 20 and on that  
9 basis denies those allegations.

10      21. Sidley admits that David Rhamy (“Rhamy”) was a member of the  
11 WesCorp board of directors. Sidley lacks knowledge or information sufficient to  
12 form a belief as to the truth of the remaining allegations of Paragraph 21 and on that  
13 basis denies those allegations.

14      22. Sidley admits that Sharon Updike (“Updike”) was a member of the  
15 WesCorp board of directors. Sidley lacks knowledge or information sufficient to  
16 form a belief as to the truth of the remaining allegations of Paragraph 22 and on that  
17 basis denies those allegations.

18      23. Sidley admits that several of the Director Defendants<sup>1</sup> were members  
19 of WesCorp’s Asset and Liability Committee (“ALCO”), budget committee,  
20 compensation committee and other committees. Sidley lacks knowledge or  
21 information sufficient to form a belief as to the truth of the remaining allegations of  
22 Paragraph 23 and on that basis denies those allegations.

23      24. Sidley admits that WesCorp’s ALCO had oversight responsibility for  
24 WesCorp’s asset liability management process, including investments. Sidley lacks  
25 knowledge or information sufficient to form a belief as to the allegations of  
26 Paragraph 24 and on that basis denies those allegations, except to the extent they

27      28 <sup>1</sup> Sidley uses the term “Director Defendants” as used in the Second Amended  
Complaint to refer to now-dismissed defendants Harvey, Merlo, Dames, Jordan,  
Kramer, Cheney, Lentz, Nakamura, Osberg, Rhamy and Updike.

1 reference the contents of WesCorp's corporate policies, which speak for  
2 themselves. Sidley refers to WesCorp's corporate policies for their contents and  
3 denies any characterization inconsistent with their terms.

4       25. Sidley admits that WesCorp's ALCO had responsibilities for  
5 WesCorp's investment strategies including investments, policies and strategies,  
6 concentration limits, the purchase and sale of securities and directing the types and  
7 level of risk. Sidley lacks knowledge or information sufficient to form a belief as to  
8 the allegations of Paragraph 25 and on that basis denies those allegations.

9       26. Sidley admits that many WesCorp board members attended ALCO  
10 meetings. Sidley lacks knowledge or information sufficient to form a belief as to  
11 the truth of the remaining allegations of Paragraph 26 and on that basis denies those  
12 allegations.

13       27. Sidley lacks knowledge or information sufficient to form a belief as to  
14 the truth of the allegations of Paragraph 27 and on that basis denies them.

15       28. Paragraph 28 contains legal conclusions, to which no response is  
16 required. To the extent the allegations require a response, they are denied.

17       29. Paragraph 29 contains legal conclusions, to which no response is  
18 required. To the extent the allegations require a response, they are denied.

#### **SUMMARY OF CLAIMS**

20       30. Sidley admits, on information and belief, that WesCorp was a non-  
21 profit corporate credit union run for the benefit of its members, who were  
22 themselves credit unions. Sidley admits, on information and belief, that WesCorp  
23 provided its members with banking and investment services. The remaining  
24 allegations of Paragraph 30 contain legal conclusions, to which no response is  
25 required. To the extent the allegations require a response, they are denied.

26       31. Sidley admits, on information and belief, that WesCorp was a  
27 corporate federal credit union and provided its members with banking and  
28 investment services. Sidley admits that Siravo served as President and CEO of

1 WesCorp. Sidley lacks knowledge or information sufficient to form a belief as to  
2 the truth of the remaining allegations of Paragraph 31, and on that basis denies  
3 those allegations.

4       32. Sidley admits that WesCorp invested in securities, including private  
5 label mortgage backed securities (“MBS”). Sidley lacks knowledge or information  
6 sufficient to form a belief as to the remaining allegations of Paragraph 32 and on  
7 that basis denies those allegations.

8       33. Sidley lacks knowledge or information sufficient to form a belief as to  
9 the truth of the allegations of Paragraph 33 and on that basis denies those  
10 allegations.

11       34. Sidley lacks knowledge or information sufficient to form a belief as to  
12 the truth of the allegations of Paragraph 34 and on that basis denies those  
13 allegations.

14       35. Sidley lacks knowledge or information sufficient to form a belief as to  
15 the truth of allegations of Paragraph 35 and on that basis denies those allegations.

16       36. Sidley admits that WesCorp invested in MBS, including MBS based  
17 on Option ARM loans. Sidley lacks knowledge or information sufficient to form a  
18 belief as to the truth of the remaining allegations of Paragraph 36 and on that basis  
19 denies those allegations.

20       37. Sidley lacks knowledge or information sufficient to form a belief as to  
21 the truth of the allegations of Paragraph 37 and on that basis denies those  
22 allegations.

23       38. Sidley admits that WesCorp invested in MBS, including MBS based  
24 on Option ARM loans. Sidley lacks knowledge or information sufficient to form a  
25 belief as to the remaining allegations of Paragraph 38 and on that basis denies those  
26 allegations.

27       39. Sidley admits, on information and belief, that the MBC loans that  
28 WesCorp purchased for investment were rated AAA or at least AA by Moody’s and

1 S&P, or both, and were underwritten by leading investment banks. Sidley lacks  
2 knowledge or information sufficient to form a belief as to the truth of the remaining  
3 allegations of Paragraph 39 and on that basis denies those allegations.

4 40. Sidley lacks knowledge or information to form a belief as to the truth  
5 of the allegations regarding WesCorp's 2009 recorded losses, and on that basis  
6 denies them, except to the extent they reference the contents of WesCorp's 2009  
7 financial statements, which speak for themselves. Sidley refers to WesCorp's 2009  
8 financial statements for their contents and denies any characterization inconsistent  
9 with their terms. Sidley lacks knowledge or information sufficient to form a belief  
10 as to the truth of the remaining allegations of Paragraph 40 and on that basis denies  
11 those allegations.

12 41. Sidley denies that WesCorp's officers failed to impose prudent  
13 concentration limits. Sidley lacks knowledge or information sufficient to form a  
14 belief as to the truth of the remaining allegations of Paragraph 41, and on that basis  
15 denies those allegations.

16 42. Sidley lacks knowledge or information sufficient to form a belief as to  
17 the truth of the allegations of Paragraph 42 and on that basis denies those  
18 allegations.

19 43. Sidley lacks knowledge or information sufficient to form a belief as to  
20 the truth of the allegations of Paragraph 43 and on that basis denies those  
21 allegations.

22 **FACTUAL ALLEGATIONS**

23 **The Federal Credit Union System**

24 44. Sidley admits, on information and belief, that the federal credit union  
25 system is a three-tier system consisting of (1) one wholesale corporate credit union  
26 (U.S. Central Federal Credit Union); (2) retail corporate credit unions; and (3)  
27 "natural person" credit unions. Sidley further admits, on information and belief,  
28 that the wholesale corporate credit union, "U.S. Central" provides services to the

1 retail corporate credit unions, while the retail corporate credit unions provide  
2 services to both federally-chartered and state-chartered natural person credit unions.  
3 Sidley lacks knowledge or information sufficient to form a belief as to the truth of  
4 the remaining allegations of Paragraph 44 and on that basis denies them.

5 45. Sidley admits, on information and belief, that WesCorp was a  
6 corporate credit union. Sidley lacks knowledge or information sufficient to form a  
7 belief as to the truth of the remaining allegations of Paragraph 45 and on that basis  
8 denies those allegations.

9 46. Sidley admits, on information and belief, that corporate credit unions  
10 are owned by their members and that in the case of retail corporate credit unions,  
11 the members are primarily natural person credit unions. Sidley lacks knowledge or  
12 information sufficient to form a belief as to the truth of the remaining allegations of  
13 Paragraph 46 and on that basis denies those allegations.

14 47. Sidley admits, on information and belief, that retail corporate credit  
15 unions provide services and support to their natural person credit union members.  
16 Sidley admits, on information and belief, that retail corporate credit unions offer  
17 their natural person credit unions banking and investment products and services,  
18 and that these products and services may include settlement of transactions such as  
19 checks, ATM and credit card transactions and wire transfers. Sidley lacks  
20 knowledge or information sufficient to form a belief as to the truth of the remaining  
21 allegations of Paragraph 47 and on that basis denies those allegations.

22 48. Sidley lacks knowledge or information sufficient to form a belief as to  
23 the truth of the allegations regarding alleged statements from WesCorp's website,  
24 and on that basis denies them, except to the extent they reference the contents of  
25 WesCorp's website, which speaks for itself. Sidley refers to WesCorp's website for  
26 its contents and denies any characterization inconsistent with its terms. Sidley  
27 lacks knowledge or information sufficient to form a belief as to the truth of the  
28 remaining allegations of Paragraph 48 and on that basis denies those allegations.

1           49. Sidley lacks knowledge or information sufficient to form a belief as to  
2 the truth of the allegations regarding alleged statements from WesCorp's bylaws,  
3 and on that basis denies them, except to the extent they reference the contents of  
4 WesCorp's bylaws, which speak for themselves. Sidley refers to WesCorp's  
5 bylaws for their contents and denies any characterization inconsistent with their  
6 terms. Sidley lacks knowledge or information sufficient to form a belief as to the  
7 truth of the remaining allegations of Paragraph 49 and on that basis denies those  
8 allegations.

9        50. Sidley admits, on information and belief, that corporate credit unions  
10 pool the assets of their natural person credit union members and provide banking  
11 and investment services to their members. Sidley lacks knowledge or information  
12 sufficient to form a belief as to the truth of the allegations of Paragraph 50 and on  
13 that basis denies those allegations.

14        51. Sidley admits, on information and belief, that WesCorp provided  
15 services to its credit union members. Sidley lacks knowledge or information  
16 sufficient to form a belief as to the truth of the remaining allegations of Paragraph  
17 51 and on that basis denies them.

## **The Officer Defendants' Responsibilities and Duties**

19        52. Sidley lacks knowledge or information sufficient to form a belief as to  
20 the truth of the allegations regarding alleged statements from WesCorp's policies,  
21 and on that basis denies them, except to the extent they reference the contents of  
22 WesCorp's policies, which speak for themselves. Sidley refers to WesCorp's  
23 policies for their contents and denies any characterization inconsistent with their  
24 terms. Sidley lacks knowledge or information sufficient to form a belief as to the  
25 truth of the remaining allegations of Paragraph 52 and on that basis denies those  
26 allegations.

27        53. Sidley admits that Siravo served as President and CEO of WesCorp.  
28 Sidley lacks knowledge or information sufficient to form a belief as to the truth of

1 the remaining allegations of Paragraph 53 and on that basis denies those allegations.

2 54. Sidley admits that Siravo served as President and CEO of WesCorp.

3 The remaining allegations of Paragraph 54 contain legal conclusions, to which no  
4 response is required. To the extent the allegations require a response, they are  
5 denied.

6 55. Sidley admits that Lane served as Chief Financial Officer of WesCorp.

7 Sidley lacks knowledge or information sufficient to form a belief as to the truth of  
8 the remaining allegations of Paragraph 55 and on that basis denies those allegations.

9 56. Sidley admits that Burrell served as Chief Investment Officer for  
10 WesCorp. Sidley lacks knowledge or information sufficient to form a belief as to  
11 the truth of the remaining allegations of Paragraph 56 and on that basis denies those  
12 allegations.

13 57. Sidley lacks knowledge or information sufficient to form a belief as to  
14 the truth of the allegations of Paragraph 57 and on that basis denies those  
15 allegations.

16 58. Sidley admits that he served as Vice President for Risk Assessment for  
17 WesCorp starting on or about June 18, 1998 through on or about June 9, 2009.  
18 Sidley further admits that the Director of Investment Credit Services reported to  
19 him as the Vice President for Risk Assessment. Sidley further admits that Risk  
20 Assessment department was responsible for risk assessment, investment risk  
21 monitoring processes, systems and procedures, but was not responsible for risk  
22 management or implementation of investment risk policies. The remaining  
23 allegations of Paragraph 58 contain legal conclusions, to which no response is  
24 required. To the extent the allegations require a response, they are vague and  
25 ambiguous and they are denied.

26 59. Sidley admits, on information and belief, that WesCorp had an  
27 Asset/Liability Staff Committee (“ALSC”). Sidley lacks knowledge or information  
28 sufficient to form a belief as to the truth of the remaining allegations of Paragraph

1 59 and on that basis denies those allegations.

2 60. Sidley admits that he was a non-voting member of the ALSC and a  
3 staff liaison to and non-voting member of the ALCO. Sidley lacks knowledge or  
4 information sufficient to form a belief as to the truth of the remaining allegations of  
5 Paragraph 60 and on that basis denies those allegations.

6 **WesCorp's Era of Growth**

7 61. Sidley lacks knowledge or information sufficient to form a belief as to  
8 the truth of the allegations of Paragraph 61 and on that basis denies those  
9 allegations.

10 62. Sidley admits that Siravo served as President and CEO of WesCorp.  
11 Sidley lacks knowledge or information sufficient to form a belief as to the  
12 remaining allegations of Paragraph 62 and on that basis denies those allegations.

13 63. Sidley lacks knowledge or information sufficient to form a belief as to  
14 the truth of the allegations of Paragraph 63 and on that basis denies those  
15 allegations.

16 64. Sidley lacks knowledge or information sufficient to form a belief as to  
17 the truth of the allegations of Paragraph 64 and on that basis denies those  
18 allegations.

19 65. Sidley lacks knowledge or information sufficient to form a belief as to  
20 the truth of the allegations of Paragraph 65 and on that basis denies those  
21 allegations.

22 66. Sidley lacks knowledge or information sufficient to form a belief as to  
23 the truth of the allegations of Paragraph 66 and on that basis denies those  
24 allegations.

25 67. Sidley admits that for a period of time, private label MBS were  
26 typically higher-yielding than MBS issued by government agencies. Sidley further  
27 admits that WesCorp invested in MBS, including private label MBS. Sidley lacks  
28 knowledge or information sufficient to form a belief as to the truth of the remaining

1 allegations of Paragraph 67 and on that basis denies those allegations.

2 68. Sidley lacks knowledge or information sufficient to form a belief as to  
3 the truth of the allegations of Paragraph 68 and on that basis denies those  
4 allegations, except to the extent they reference the contents of WesCorp's corporate  
5 policies, which speak for themselves. Sidley refers to WesCorp's corporate policies  
6 for their contents and denies any characterization inconsistent with their terms..

7 69. Sidley lacks knowledge or information sufficient to form a belief as to  
8 the truth of the allegations of Paragraph 69 and on that basis denies those  
9 allegations.

10 70. Sidley lacks knowledge or information sufficient to form a belief as to  
11 the truth of the allegations of Paragraph 70 and on that basis denies those  
12 allegations.

13 **WesCorp's Private Label MBS Investments**

14 71. Sidley lacks knowledge or information sufficient to form a belief as to  
15 the truth of the allegations of Paragraph 71 and on that basis denies those  
16 allegations.

17 72. Sidley lacks knowledge or information sufficient to form a belief as to  
18 the truth of the allegations of Paragraph 72 and on that basis denies those  
19 allegations.

20 73. Sidley admits that WesCorp invested in AAA rated and AA rated  
21 private label MBS. Sidley lacks knowledge or information sufficient to form a  
22 belief as to the truth of the remaining allegations of Paragraph 73 and on that basis  
23 denies those allegations, except to the extent they reference the contents of NCUA  
24 regulations and/or WesCorp's investment policies, which speak for themselves.  
25 Sidley refers to the NCUA's regulations and/or WesCorp's investment policies for  
26 their contents and denies any characterization inconsistent with their terms.

27 74. Sidley admits that WesCorp invested in MBS, including Collateralized  
28 Debt Obligations ("CDOs") and Option ARM MBS. Sidley lacks knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations of  
2 Paragraph 74 and on that basis denies those allegations.

3 75. Sidley admits that CDOs are shares in a pool of MBS. The remaining  
4 allegations of Paragraph 75 are legal conclusions, to which no response is required.  
5 To the extent the allegations require a response, they are denied.

6 76. Sidley admits that WesCorp purchased CDOs. Sidley lacks  
7 knowledge or information sufficient to form a belief as to the truth of the remaining  
8 allegations of Paragraph 76 and on that basis denies those allegations.

9 77. Sidley admits that Option ARM MBS are shares in pools of Option  
10 ARM mortgages. Sidley further admits, on information and belief, that in some  
11 instances Option ARM MBS monthly payments "reset." Sidley lacks knowledge or  
12 information sufficient to form a belief as to the remaining allegations of Paragraph  
13 77 and on that basis denies those allegations.

14 78. Sidley lacks knowledge or information sufficient to form a belief as to  
15 the truth of the allegations of Paragraph 78 and on that basis denies those  
16 allegations.

17 79. Sidley lacks knowledge or information sufficient to form a belief as to  
18 the truth of the allegations of Paragraph 79 and on that basis denies those  
19 allegations.

20 80. Sidley admits that WesCorp invested in Option ARM MBS. Sidley  
21 lacks knowledge or information sufficient to form a belief as to the truth of the  
22 remaining allegations of Paragraph 80 and on that basis denies those allegations.

23 81. Sidley admits that MBS investments were sold in tranches and that  
24 WesCorp invested in some AAA rated and AA rated MBS from tranches that paid  
25 a higher yield. Sidley lacks knowledge or information sufficient to form a belief as  
26 to the truth of the remaining allegations of Paragraph 81 and on that basis denies  
27 those allegations.

28 82. Sidley admits that WesCorp invested in AA and AAA rated MBS.

1 Sidley lacks knowledge or information sufficient to form a belief as to the truth of  
2 the remaining allegations of Paragraph 82 and on that basis denies those allegations.

3        83. Sidley lacks knowledge or information sufficient to form a belief as to  
4 the truth of the allegations of Paragraph 83 and on that basis denies those  
5 allegations.

6        84. Sidley admits that WesCorp invested in AAA rated Option ARM  
7 MBS. Sidley lacks knowledge or information sufficient to form a belief as to the  
8 truth of the remaining allegations of Paragraph 84 and on that basis denies those  
9 allegations.

## **WesCorp's Budgets**

11        85. Sidley admits that WesCorp's management proposed budgets, that  
12 budgets were considered by the budget committee and that budgets were  
13 recommended by the budget committee to WesCorp's Board of Directors. Sidley  
14 lacks knowledge or information sufficient to form a belief as to the truth of the  
15 remaining allegations of Paragraph 85 and on that basis denies those allegations.

16. Paragraph 86 contains legal conclusions, to which no response is  
17 required. To the extent the allegations require a response, Sidley lacks knowledge  
18 or information sufficient to form a belief as to the truth of the allegations of  
19 Paragraph 86 and on that basis denies those allegations.

20        87. Paragraph 87 contains legal conclusions, to which no response is  
21 required. To the extent the allegations require a response, Sidley lacks knowledge  
22 or information sufficient to form a belief as to the truth of the allegations of  
23 Paragraph 87 and on that basis denies those allegations.

24        88. Sidley lacks knowledge or information sufficient to form a belief as to  
25 the truth of the allegations of Paragraph 88 and on that basis denies those  
26 allegations, except to the extent they reference the contents of WesCorp's budgets,  
27 which speak for themselves. Sidley refers to WesCorp's budgets for their contents  
28 and denies any characterization inconsistent with their terms.

1        89. Sidley lacks knowledge or information sufficient to form a belief as to  
2 the truth of the allegations of Paragraph 89 and on that basis denies those  
3 allegations.

4        90. Sidley lacks knowledge or information sufficient to form a belief as to  
5 the truth of the allegations of Paragraph 90 and on that basis denies those  
6 allegations, except to the extent they reference the contents of WesCorp's budgets,  
7 which speak for themselves. Sidley refers to WesCorp's budgets for their contents  
8 and denies any characterization inconsistent with their terms.

9        91. Sidley lacks knowledge or information sufficient to form a belief as to  
10 the truth of the allegations of Paragraph 91 and on that basis denies those  
11 allegations.

12       92. Sidley lacks knowledge or information sufficient to form a belief as to  
13 the truth of the allegations of Paragraph 92 and on that basis denies those  
14 allegations.

15       93. Sidley lacks knowledge or information sufficient to form a belief as to  
16 the truth of the allegations of Paragraph 93 and on that basis denies those  
17 allegations.

18       94. Sidley lacks knowledge or information sufficient to form a belief as to  
19 the truth of the allegations of Paragraph 94, and on that basis denies those  
20 allegations, except to the extent they reference the contents of WesCorp's budgets,  
21 which speak for themselves. Sidley refers to WesCorp's budgets for their contents  
22 and denies any characterization inconsistent with their terms.

23       95. Sidley lacks knowledge or information sufficient to form a belief as to  
24 the truth of the allegations of Paragraph 95 and on that basis denies those  
25 allegations.

26       96. Sidley lacks knowledge or information sufficient to form a belief as to  
27 the truth of the allegations of Paragraph 96 and on that basis denies those  
28 allegations.

1       97. Sidley lacks knowledge or information sufficient to form a belief as to  
2 the truth of the allegations of Paragraph 97 and on that basis denies those  
3 allegations, except to the extent they reference the contents of WesCorp's ALCO  
4 books, which speak for themselves. Sidley refers to WesCorp's ALCO books for  
5 their contents and denies any characterization inconsistent with their terms.

6       98. Sidley lacks knowledge or information sufficient to form a belief as to  
7 the truth of the allegations of Paragraph 98 and on that basis denies those  
8 allegations.

9       99. Sidley lacks knowledge or information sufficient to form a belief as to  
10 the truth of the allegations of Paragraph 99 and on that basis denies those  
11 allegations.

12      100. Paragraph 100 contains legal conclusions, to which no response is  
13 required. To the extent the allegations require a response, Sidley lacks knowledge  
14 or information sufficient to form a belief as to the truth of the allegations of  
15 Paragraph 100 and on that basis denies those allegations.

16      101. Paragraph 101 contains legal conclusions, to which no response is  
17 required. To the extent the allegations require a response, Sidley lacks knowledge  
18 or information sufficient to form a belief as to the truth of the allegations of  
19 Paragraph 101 and on that basis denies those allegations.

20      102. Sidley lacks knowledge or information sufficient to form a belief as to  
21 the truth of the allegations of Paragraph 102 and on that basis denies those  
22 allegations.

23      103. Paragraph 103 contains legal conclusions, to which no response is  
24 required. To the extent the allegations require a response, Sidley lacks knowledge  
25 or information sufficient to form a belief as to the truth of the allegations of  
26 Paragraph 103 and on that basis denies those allegations.

27      104. Sidley lacks knowledge or information sufficient to form a belief as to  
28 the truth of the allegations of Paragraph 104 and on that basis denies those

1 allegations.

2 **MBS Concentration Risk**

3 105. Paragraph 105 contains legal conclusions, to which no response is  
4 required. To the extent the allegations require a response, Sidley lacks knowledge  
5 or information sufficient to form a belief as to the truth of the allegations of  
6 Paragraph 105 and on that basis denies those allegations, except to the extent they  
7 reference the contents of NCUA regulation, which speak for themselves. Sidley  
8 refers to the NCUA regulations for their contents and denies any characterization  
9 inconsistent with their terms.

10 106. Sidley lacks knowledge or information sufficient to form a belief as to  
11 the truth of the allegations of Paragraph 106 and on that basis denies those  
12 allegations.

13 107. Sidley admits that WesCorp provided services to its members. Sidley  
14 lacks knowledge or information sufficient to form a belief as to the truth of the  
15 remaining allegations of Paragraph 107 and on that basis denies those allegations.

16 108. Sidley admits that WesCorp's Board of Directors was responsible for  
17 setting investment policies. Sidley lacks knowledge or information sufficient to  
18 form a belief as to the truth of the remaining allegations of Paragraph 108 and on  
19 that basis denies those allegations, except to the extent they reference the contents  
20 of WesCorp's policies, which speak for themselves. Sidley refers to WesCorp's  
21 policies for their contents and denies any characterization inconsistent with their  
22 terms..

23 109. Sidley admits that the ALCO had responsibilities for reviewing  
24 WesCorp's investments. Sidley lacks knowledge or information sufficient to form  
25 a belief as to the truth of the remaining allegations of Paragraph 109 and on that  
26 basis denies those allegations.

27 110. Sidley denies the allegations of paragraph 110 of the Complaint.  
28 Sidley headed the Risk Assessment Department at WesCorp. WesCorp's Risk

Assessment Department was responsible for proposing obligor concentration limits for WesCorp's investment portfolio but was not responsible for proposing investment concentration limits for WesCorp's investment portfolio. Sidley and the Risk Assessment Department at all times complied with the relevant and applicable WesCorp policies, including WesCorp's Corporate Policy 940-5. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 110 and on that basis denies those allegations.

111. Sidley admits that WesCorp's board adopted policies specifying concentration limits for its investment securities and from time to time amended the policies to change limits or impose new limits. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 111 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's policies, which speak for themselves. Sidley refers to WesCorp's policies for their contents and denies any characterization inconsistent with their terms.

112. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 112 and on that basis denies them.

113. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 113 and on that basis denies those allegations.

114. Sidley admits that WesCorp purchased AAA rated private label MBS. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 114 and on that basis denies those allegations.

# **The Risks of Option ARM MBS**

115. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 115 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's corporate

1 policies, which speak for themselves. Sidley refers to WesCorp's corporate policies  
2 for their contents and denies any characterization inconsistent with their terms.

3 116. Sidley admits that WesCorp purchased Option ARM MBS but denies  
4 that they were a new security type. Sidley lacks information or knowledge  
5 sufficient to form a belief as to the truth of the remaining allegations of Paragraph  
6 116 and on that basis denies those allegations.

7 117. Sidley admits that WesCorp purchased Option ARM MBS with the  
8 approval of WesCorp's Board of Directors and ALCO but denies that Option ARM  
9 MBS were a new security type. Sidley lacks knowledge or information sufficient to  
10 form a belief as to the truth of the allegations of Paragraph 117 and on that basis  
11 denies those allegations.

12 118. Sidley admits that, with the approval of WesCorp's Board of Directors  
13 and ALCO, WesCorp purchases Option ARM MBS, but denies that Option ARM  
14 MBS were a new security type. Sidley lacks knowledge or information sufficient to  
15 form a belief as to the truth of the allegations of Paragraph 118 and on that basis  
16 denies those allegations.

17 119. Sidley denies that Option ARM MBS were a new security type. Sidley  
18 lacks knowledge or information sufficient to form a belief as to the truth of the  
19 allegations of Paragraph 119 and on that basis denies those allegations.

20 120. Sidley lacks information or knowledge sufficient to form a belief as to  
21 the truth of the allegations of Paragraph 120 and on that basis denies those  
22 allegations.

23 121. Sidley lacks information or knowledge sufficient to form a belief as to  
24 the truth of the allegations of Paragraph 121 and on that basis denies those  
25 allegations.

26 122. Sidley lacks information or knowledge sufficient to form a belief as to  
27 the truth of the allegations of Paragraph 122 and on that basis denies those  
28 allegations.

1           123. Sidley lacks knowledge or information sufficient to form a belief as to  
2 the truth of the allegations of Paragraph 123 and on that basis denies those  
3 allegations.

4           124. Sidley specifically denies any allegation of Paragraph 124 that he was  
5 required to propose or adopt concentration limits for Option ARM MBS in  
6 WesCorp's portfolio or to recommend concentration limits other than obligor  
7 concentration limits. Sidley lacks knowledge or information sufficient to form a  
8 belief as to the truth of the remaining allegations of Paragraph 124 and on that basis  
9 denies those allegations.

10          125. Sidley lacks knowledge or information sufficient to form a belief as to  
11 the truth of the allegations of Paragraph 125 and on that basis denies those  
12 allegations.

13          126. Sidley lacks information or knowledge sufficient to form a belief as to  
14 the truth of the allegations of Paragraph 126 and on that basis denies those  
15 allegations.

16          127. Paragraph 127 contains legal conclusions, to which no response is  
17 required. To the extent the allegations require a response, they are denied.

18          128. Sidley specifically denies any allegation of Paragraph 128 that he was  
19 required to propose or adopt concentration limits for Option ARM MBS in  
20 WesCorp's portfolio or to recommend concentration limits other than obligor  
21 concentration limits. Sidley admits that WesCorp purchases AAA rated and AAA  
22 rated MBS. Sidley lacks knowledge or information sufficient to form a belief as to  
23 the truth of the remaining allegations of Paragraph 128 and on that basis denies  
24 those allegations.

25          129. Sidley specifically denies any allegation of Paragraph 129 that he was  
26 required to propose or adopt concentration limits for Option ARM MBS in  
27 WesCorp's portfolio or to recommend concentration limits other than obligor  
28 concentration limits. Sidley further denies that WesCorp was unaware of the

1 concentrations of MBS. Sidley lacks information or knowledge sufficient to form a  
2 belief as to the truth of the remaining allegations of Paragraph 129 and on that basis  
3 denies those allegations.

4 130. Sidley denies that WesCorp was unaware of the concentrations of  
5 Option ARM MBS. Sidley lacks information or knowledge sufficient to form a  
6 belief as to the truth of the remaining allegations of Paragraph 130 and on that basis  
7 denies those allegations.

8 131. Sidley lacks information or knowledge sufficient to form a belief as to  
9 the truth of the allegations of Paragraph 131 and on that basis denies those  
10 allegations.

11 132. Sidley admits that he was the officer in charge of the Investment  
12 Credit Services Department for a period of time and Chief Risk Officer from  
13 October 3, 2006 to June 9, 2009. Paragraph 132 contains legal conclusions to  
14 which no response is required. To the extent these allegations require a response,  
15 Sidley lacks knowledge or information sufficient to form a belief as to the truth of  
16 the allegations of Paragraph 132, as well as to the truth of the remaining allegations  
17 of Paragraph 132, and on that basis denies those allegations.

18 133. Sidley lacks information or knowledge sufficient to form a belief as to  
19 the truth of the allegations of Paragraph 133 and on that basis denies those  
20 allegations.

21 **The Risks in WesCorp's Portfolio**

22 134. Sidley lacks information or knowledge sufficient to form a belief as to  
23 the truth of the allegations of Paragraph 134 and on that basis denies those  
24 allegations.

25 135. Sidley admits that the Officer Defendants and the Director Defendants  
26 generally attended the ALCO meetings. Sidley further admits that at ALCO  
27 meetings, there were often presentations about the economy and WesCorp's  
28 investments. Sidley lacks information or knowledge sufficient to form a belief as to

1 the truth of the remaining allegations of Paragraph 135 and on that basis denies  
2 those allegations.

3 136. Sidley lacks information or knowledge sufficient to form a belief as to  
4 the truth of the allegations of Paragraph 136 and on that basis denies those  
5 allegations.

6 137. Sidley admits that the Officer Defendants and the Director Defendants  
7 generally attended the ALCO meetings. Sidley further admits that at some ALCO  
8 meetings, there were presentations about interest rates and housing markets. Sidley  
9 lacks information or knowledge sufficient to form a belief as to the truth of the  
10 remaining allegations of Paragraph 137 and on that basis denies those allegations.

11 138. Sidley lacks knowledge or information sufficient to form a belief as to  
12 the truth of the allegations in Paragraph 138 and on that basis denies those  
13 allegations, except to the extent they reference the contents of WesCorp's ALCO  
14 books, which speak for themselves. Sidley refers to WesCorp's ALCO books for  
15 their contents and denies any characterization inconsistent with its terms.

16 139. Sidley lacks knowledge or information sufficient to form a belief as to  
17 the truth of the allegations in Paragraph 139 and on that basis denies those  
18 allegations, except to the extent they reference the contents of WesCorp's ALCO  
19 books, which speak for themselves. Sidley refers to WesCorp's ALCO books for  
20 their contents and denies any characterization inconsistent with its terms.

21 140. Sidley lacks information or knowledge sufficient to form a belief as to  
22 the truth of the allegations of Paragraph 140 and on that basis denies those  
23 allegations.

24 141. Sidley lacks knowledge or information sufficient to form a belief as to  
25 the truth of the allegations in Paragraph 141 and on that basis denies those  
26 allegations, except to the extent they reference the contents of WesCorp's ALCO  
27 books, which speak for themselves. Sidley refers to WesCorp's ALCO books for  
28 their contents and denies any characterization inconsistent with its terms.

142. Sidley lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 142 and on that basis denies those allegations, except to the extent they reference the contents of WesCorp's ALCO books, which speak for themselves. Sidley refers to WesCorp's ALCO books for their contents and denies any characterization inconsistent with its terms.

143. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 143 and on that basis denies those allegations.

144. Sidley admits that WesCorp continued to purchase AAA rated Option ARM MBS in 2007 and that it stopped purchasing private label MBS sometime in 2007. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 144 and on that basis denies those allegations.

145. Paragraph 145 contains legal conclusions, to which no response is required. To the extent the allegations require a response, they are denied.

146. Sidley admits that WesCorp continued to purchase AAA rated Option ARM MBS in 2007 and that it stopped purchasing private label MBS sometime in 2007. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 146 and on that basis denies those allegations.

147. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 147 and on that basis denies those allegations.

## WesCorp's Collapse

148. Sidley lacks information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 148 and on that basis denies those allegations.

149. Sidley specifically denies any allegation of Paragraph 149 that he was

1 required to propose or adopt concentration limits for Option ARM MBS in  
2 WesCorp's portfolio or to recommend concentration limits other than obligor  
3 concentration limits. Sidley lacks knowledge or information sufficient to form a  
4 belief as to the truth of the remaining allegations of Paragraph 149 and on that basis  
5 denies those allegations.

6 150. Sidley lacks information or knowledge sufficient to form a belief as to  
7 the truth of the allegations of Paragraph 150 and on that basis denies those  
8 allegations.

9 151. Sidley specifically denies any allegation of Paragraph 151 that he was  
10 required to propose or adopt concentration limits for Option ARM MBS in  
11 WesCorp's portfolio or to recommend concentration limits other than obligor  
12 concentration limits. Sidley lacks information or knowledge sufficient to form a  
13 belief as to the truth of the remaining allegations of Paragraph 151 and on that basis  
14 denies those allegations.

15 152. Sidley lacks information or knowledge sufficient to form a belief as to  
16 the truth of the allegations of Paragraph 152 and on that basis denies those  
17 allegations.

18 153. Sidley lacks information or knowledge sufficient to form a belief as to  
19 the truth of the allegations of Paragraph 153 and on that basis denies those  
20 allegations.

21 **The SERP Payments**

22 154. Sidley lacks information or knowledge sufficient to form a belief as to  
23 the truth of the allegations of Paragraph 154 and on that basis denies those  
24 allegations.

25 155. Sidley lacks information or knowledge sufficient to form a belief as to  
26 the truth of the allegations of Paragraph 155 and on that basis denies those  
27 allegations.

28 156. Sidley admits, on information and belief, that Siravo became President

1 and CEO of WesCorp. Sidley lacks information or knowledge sufficient to form a  
2 belief as to the truth of the remaining allegations of Paragraph 156 and on that basis  
3 denies those allegations.

4 157. Sidley lacks information or knowledge sufficient to form a belief as to  
5 the truth of the allegations of Paragraph 157 and on that basis denies those  
6 allegations.

7 158. Sidley lacks information or knowledge sufficient to form a belief as to  
8 the truth of the allegations of Paragraph 158 and on that basis denies those  
9 allegations.

10 159. Sidley lacks information or knowledge sufficient to form a belief as to  
11 the truth of the allegations of Paragraph 159 and on that basis denies those  
12 allegations.

13 160. Sidley lacks information or knowledge sufficient to form a belief as to  
14 the truth of the allegations of Paragraph 160 and on that basis denies those  
15 allegations.

16 161. Sidley lacks information or knowledge sufficient to form a belief as to  
17 the truth of the allegations of Paragraph 161 and on that basis denies those  
18 allegations.

19 162. Sidley lacks information or knowledge sufficient to form a belief as to  
20 the truth of the allegations of Paragraph 162 and on that basis denies those  
21 allegations.

22 163. Sidley lacks information or knowledge sufficient to form a belief as to  
23 the truth of the allegations of Paragraph 163 and on that basis denies those  
24 allegations.

25 164. Sidley lacks information or knowledge sufficient to form a belief as to  
26 the truth of the allegations of Paragraph 164 and on that basis denies those  
27 allegations.

28 165. Sidley lacks information or knowledge sufficient to form a belief as to

1 the truth of the allegations of Paragraph 165 and on that basis denies those  
2 allegations.

3 166. Sidley lacks information or knowledge sufficient to form a belief as to  
4 the truth of the allegations of Paragraph 166 and on that basis denies those  
5 allegations.

6 167. Sidley lacks information or knowledge sufficient to form a belief as to  
7 the truth of the allegations of Paragraph 167 and on that basis denies those  
8 allegations.

9 168. Sidley lacks information or knowledge sufficient to form a belief as to  
10 the truth of the allegations of Paragraph 168 and on that basis denies those  
11 allegations.

12 169. Sidley lacks information or knowledge sufficient to form a belief as to  
13 the truth of the allegations of Paragraph 169 and on that basis denies those  
14 allegations.

15 170. Sidley lacks information or knowledge sufficient to form a belief as to  
16 the truth of the allegations of Paragraph 170 and on that basis denies those  
17 allegations.

18 171. Sidley lacks information or knowledge sufficient to form a belief as to  
19 the truth of the allegations of Paragraph 171 and on that basis denies those  
20 allegations.

21 172. Sidley lacks information or knowledge sufficient to form a belief as to  
22 the truth of the allegations of Paragraph 172 and on that basis denies those  
23 allegations.

24 173. Sidley lacks information or knowledge sufficient to form a belief as to  
25 the truth of the allegations of Paragraph 173 and on that basis denies those  
26 allegations.

27 174. Sidley lacks information or knowledge sufficient to form a belief as to  
28 the truth of the allegations of Paragraph 174 and on that basis denies those

1 || allegations.

2        175. Sidley lacks information or knowledge sufficient to form a belief as to  
3 the truth of the allegations of Paragraph 175 and on that basis denies those  
4 allegations.

5           176. Sidley lacks information or knowledge sufficient to form a belief as to  
6 the truth of the allegations of Paragraph 176 and on that basis denies those  
7 allegations.

8           177. Sidley lacks information or knowledge sufficient to form a belief as to  
9 the truth of the allegations of Paragraph 177 and on that basis denies those  
10 allegations.

11           178. Sidley lacks information or knowledge sufficient to form a belief as to  
12 the truth of the allegations of Paragraph 178 and on that basis denies those  
13 allegations.

14           179. Sidley lacks information or knowledge sufficient to form a belief as to  
15 the truth of the allegations of Paragraph 179 and on that basis denies those  
16 allegations.

17           180. Sidley lacks information or knowledge sufficient to form a belief as to  
18 the truth of the allegations of Paragraph 180 and on that basis denies those  
19 allegations.

20           181. Sidley lacks information or knowledge sufficient to form a belief as to  
21 the truth of the allegations of Paragraph 181 and on that basis denies those  
22 allegations.

23           182. Sidley lacks information or knowledge sufficient to form a belief as to  
24 the truth of the allegations of Paragraph 182 and on that basis denies those  
25 allegations.

**FIRST CLAIM FOR RELIEF**

### **(Breach of Fiduciary Duties – Against the Officer Defendants)**

28 183. Sidley incorporates by reference his responses to paragraphs 1 through

1 182 as though set forth in full.

2 184. Paragraph 184 contains legal conclusions, to which no response is  
3 required. To the extent the allegations require a response, they are denied.

4 185. Paragraph 185 contains legal conclusions, to which no response is  
5 required. To the extent the allegations require a response, they are denied.

6 186. Paragraph 186 contains legal conclusions, to which no response is  
7 required. To the extent the allegations require a response, they are denied.

8 187. Paragraph 187 contains legal conclusions, to which no response is  
9 required. To the extent the allegations require a response, Sidley lacks information  
10 or knowledge sufficient to form a belief as to the truth of the allegations of  
11 Paragraph 187 and on that basis denies those allegations.

12 188. Paragraph 188 contains legal conclusions, to which no response is  
13 required. To the extent the allegations require a response, Sidley lacks information  
14 or knowledge sufficient to form a belief as to the truth of the allegations of  
15 Paragraph 188 and on that basis denies those allegations.

16 189. Paragraph 189 contains legal conclusions, to which no response is  
17 required. To the extent the allegations require a response, Sidley lacks information  
18 or knowledge sufficient to form a belief as to the truth of the allegations of  
19 Paragraph 189 and on that basis denies those allegations.

20 190. Paragraph 190 contains legal conclusions, to which no response is  
21 required. To the extent the allegations require a response, Sidley lacks information  
22 or knowledge sufficient to form a belief as to the truth of the allegations of  
23 Paragraph 190 and on that basis denies those allegations.

24 191. Paragraph 191 contains legal conclusions, to which no response is  
25 required. To the extent the allegations require a response, Sidley lacks information  
26 or knowledge sufficient to form a belief as to the truth of the allegations of  
27 Paragraph 191 and on that basis denies those allegations.

28 192. Paragraph 192 contains legal conclusions, to which no response is

1 required. To the extent the allegations require a response, Sidley lacks information  
2 or knowledge sufficient to form a belief as to the truth of the allegations of  
3 Paragraph 192 and on that basis denies those allegations.

4 193. Paragraph 193 contains legal conclusions, to which no response is  
5 required. To the extent the allegations require a response, Sidley lacks information  
6 or knowledge sufficient to form a belief as to the truth of the allegations of  
7 Paragraph 193 and on that basis denies those allegations.

8 194. Sidley admits that he served as Chief Risk Officer from October 3,  
9 2006 through June 9, 2009, and as Vice President for Risk Assessment from June  
10 18, 1998 through June 9, 2009. The remaining allegations of Paragraph 194  
11 contain legal conclusions, to which no response is required. To the extent the  
12 allegations require a response, they are denied.

13 195. Paragraph 195 contains legal conclusions, to which no response is  
14 required. To the extent the allegations require a response, they are denied.

15 196. Sidley denies that he breached any duties that he owed to WesCorp.  
16 Paragraph 196 contains legal conclusions, to which no response is required. To the  
17 extent the remaining allegations require a response, they are denied.

18 197. Sidley lacks information or knowledge sufficient to form a belief as to  
19 the truth of the allegations of Paragraph 197 and on that basis denies those  
20 allegations.

21 198. Sidley lacks information or knowledge sufficient to form a belief as to  
22 the truth of the allegations of Paragraph 198 and on that basis denies those  
23 allegations.

24 **SECOND CLAIM FOR RELIEF**

25 **(Breach of Fiduciary Duties – Against Defendants Rhamy, Updike, Dames,  
26 Osberg, Longson and Harvey)**

27 199. Sidley incorporates by reference his responses to paragraphs 1 through  
28 198 as though set forth in full.

1       200. Sidley is not named as a defendant to this Claim and accordingly no  
2 response is required. To the extent the allegations require a response, Sidley lacks  
3 information or knowledge sufficient to form a belief as to the truth of the  
4 allegations, and on that basis denies them.

5       201. Sidley is not named as a defendant to this Claim and accordingly no  
6 response is required. To the extent the allegations require a response, Sidley lacks  
7 information or knowledge sufficient to form a belief as to the truth of the  
8 allegations, and on that basis denies them.

9        202. Sidley is not named as a defendant to this Claim and accordingly no  
10 response is required. To the extent the allegations require a response, Sidley lacks  
11 information or knowledge sufficient to form a belief as to the truth of the  
12 allegations, and on that basis denies them.

13        203. Sidley is not named as a defendant to this Claim and accordingly no  
14 response is required. To the extent the allegations require a response, Sidley lacks  
15 information or knowledge sufficient to form a belief as to the truth of the  
16 allegations, and on that basis denies them.

17        204. Sidley is not named as a defendant to this Claim and accordingly no  
18 response is required. To the extent the allegations require a response, Sidley lacks  
19 information or knowledge sufficient to form a belief as to the truth of the  
20 allegations, and on that basis denies them.

21        205. Sidley is not named as a defendant to this Claim and accordingly no  
22 response is required. To the extent the allegations require a response, Sidley lacks  
23 information or knowledge sufficient to form a belief as to the truth of the  
24 allegations, and on that basis denies them.

## **THIRD CLAIM FOR RELIEF**

**(Breach of Fiduciary Duties – Against Defendants Jordan, Nakamura, Cheney,  
Rhamy, Kramer, Lentz, and Osberg)**

28 ||| 206. Sidley incorporates by reference his responses to paragraphs 1 through

1 205 as though set forth in full.

2 207. Sidley is not named as a defendant to this Claim and accordingly no  
3 response is required. To the extent the allegations require a response, Sidley lacks  
4 information or knowledge sufficient to form a belief as to the truth of the  
5 allegations, and on that basis denies them.

6 208. Sidley is not named as a defendant to this Claim and accordingly no  
7 response is required. To the extent the allegations require a response, Sidley lacks  
8 information or knowledge sufficient to form a belief as to the truth of the  
9 allegations, and on that basis denies them.

10 209. Sidley is not named as a defendant to this Claim and accordingly no  
11 response is required. To the extent the allegations require a response, Sidley lacks  
12 information or knowledge sufficient to form a belief as to the truth of the  
13 allegations, and on that basis denies them.

14 210. Sidley is not named as a defendant to this Claim and accordingly no  
15 response is required. To the extent the allegations require a response, Sidley lacks  
16 information or knowledge sufficient to form a belief as to the truth of the  
17 allegations, and on that basis denies them.

18 211. Sidley is not named as a defendant to this Claim and accordingly no  
19 response is required. To the extent the allegations require a response, Sidley lacks  
20 information or knowledge sufficient to form a belief as to the truth of the  
21 allegations, and on that basis denies them.

22 212. Sidley is not named as a defendant to this Claim and accordingly no  
23 response is required. To the extent the allegations require a response, Sidley lacks  
24 information or knowledge sufficient to form a belief as to the truth of the  
25 allegations, and on that basis denies them.

26 **FOURTH CLAIM FOR RELIEF**

27 **(Breach of Fiduciary Duties – Against All Director Defendants)**

28 213. Sidley incorporates by reference his responses to paragraphs 1 through

1 212 as though set forth in full.

2 214. Sidley is not named as a defendant to this Claim and accordingly no  
3 response is required. To the extent the allegations require a response, Sidley lacks  
4 information or knowledge sufficient to form a belief as to the truth of the  
5 allegations, and on that basis denies them.

6 215. Sidley is not named as a defendant to this Claim and accordingly no  
7 response is required. To the extent the allegations require a response, Sidley lacks  
8 information or knowledge sufficient to form a belief as to the truth of the  
9 allegations, and on that basis denies them.

10 216. Sidley is not named as a defendant to this Claim and accordingly no  
11 response is required. To the extent the allegations require a response, Sidley lacks  
12 information or knowledge sufficient to form a belief as to the truth of the  
13 allegations, and on that basis denies them.

14 217. Sidley is not named as a defendant to this Claim and accordingly no  
15 response is required. To the extent the allegations require a response, Sidley lacks  
16 information or knowledge sufficient to form a belief as to the truth of the  
17 allegations, and on that basis denies them.

18 218. Sidley is not named as a defendant to this Claim and accordingly no  
19 response is required. To the extent the allegations require a response, Sidley lacks  
20 information or knowledge sufficient to form a belief as to the truth of the  
21 allegations, and on that basis denies them.

22 219. Sidley is not named as a defendant to this Claim and accordingly no  
23 response is required. To the extent the allegations require a response, Sidley lacks  
24 information or knowledge sufficient to form a belief as to the truth of the  
25 allegations, and on that basis denies them.

26 220. Sidley is not named as a defendant to this Claim and accordingly no  
27 response is required. To the extent the allegations require a response, Sidley lacks  
28 information or knowledge sufficient to form a belief as to the truth of the

1 allegations, and on that basis denies them.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Breach of Fiduciary Duty – Against Siravo and Swedberg)**

4 221. Sidley incorporates by reference his responses to paragraphs 1 through  
5 220 as though set forth in full.

6 222. Sidley is not named as a defendant to this Claim and accordingly no  
7 response is required. To the extent the allegations require a response, Sidley lacks  
8 information or knowledge sufficient to form a belief as to the truth of the  
9 allegations, and on that basis denies them.

10 223. Sidley is not named as a defendant to this Claim and accordingly no  
11 response is required. To the extent the allegations require a response, Sidley lacks  
12 information or knowledge sufficient to form a belief as to the truth of the  
13 allegations, and on that basis denies them.

14 224. Sidley is not named as a defendant to this Claim and accordingly no  
15 response is required. To the extent the allegations require a response, Sidley lacks  
16 information or knowledge sufficient to form a belief as to the truth of the  
17 allegations, and on that basis denies them.

18 225. Sidley is not named as a defendant to this Claim and accordingly no  
19 response is required. To the extent the allegations require a response, Sidley lacks  
20 information or knowledge sufficient to form a belief as to the truth of the  
21 allegations, and on that basis denies them.

22 226. Sidley is not named as a defendant to this Claim and accordingly no  
23 response is required. To the extent the allegations require a response, Sidley lacks  
24 information or knowledge sufficient to form a belief as to the truth of the  
25 allegations, and on that basis denies them.

26 **SIXTH CLAIM FOR RELIEF**

27 **(Fraud – Against Siravo and Swedberg)**

28 227. Sidley incorporates by reference his responses to paragraphs 1 through

1 226 as though set forth in full.

2 228. Sidley is not named as a defendant to this Claim and accordingly no  
3 response is required. To the extent the allegations require a response, Sidley lacks  
4 information or knowledge sufficient to form a belief as to the truth of the  
5 allegations, and on that basis denies them.

6 229. Sidley is not named as a defendant to this Claim and accordingly no  
7 response is required. To the extent the allegations require a response, Sidley lacks  
8 information or knowledge sufficient to form a belief as to the truth of the  
9 allegations, and on that basis denies them.

10 230. Sidley is not named as a defendant to this Claim and accordingly no  
11 response is required. To the extent the allegations require a response, Sidley lacks  
12 information or knowledge sufficient to form a belief as to the truth of the  
13 allegations, and on that basis denies them.

14 231. Sidley is not named as a defendant to this Claim and accordingly no  
15 response is required. To the extent the allegations require a response, Sidley lacks  
16 information or knowledge sufficient to form a belief as to the truth of the  
17 allegations, and on that basis denies them.

18 232. Sidley is not named as a defendant to this Claim and accordingly no  
19 response is required. To the extent the allegations require a response, Sidley lacks  
20 information or knowledge sufficient to form a belief as to the truth of the  
21 allegations, and on that basis denies them.

22 233. Sidley is not named as a defendant to this Claim and accordingly no  
23 response is required. To the extent the allegations require a response, Sidley lacks  
24 information or knowledge sufficient to form a belief as to the truth of the  
25 allegations, and on that basis denies them.

26 234. Sidley is not named as a defendant to this Claim and accordingly no  
27 response is required. To the extent the allegations require a response, Sidley lacks  
28 information or knowledge sufficient to form a belief as to the truth of the

1 allegations, and on that basis denies them.

2 **SEVENTH CLAIM FOR RELIEF**

3 **(Breach of Fiduciary Duty – Against Siravo)**

4 235. Sidley incorporates by reference his responses to paragraphs 1 through  
5 234 as though set forth in full.

6 236. Sidley is not named as a defendant to this Claim and accordingly no  
7 response is required. To the extent the allegations require a response, Sidley lacks  
8 information or knowledge sufficient to form a belief as to the truth of the  
9 allegations, and on that basis denies them.

10 237. Sidley is not named as a defendant to this Claim and accordingly no  
11 response is required. To the extent the allegations require a response, Sidley lacks  
12 information or knowledge sufficient to form a belief as to the truth of the  
13 allegations, and on that basis denies them.

14 238. Sidley is not named as a defendant to this Claim and accordingly no  
15 response is required. To the extent the allegations require a response, Sidley lacks  
16 information or knowledge sufficient to form a belief as to the truth of the  
17 allegations, and on that basis denies them.

18 239. Sidley is not named as a defendant to this Claim and accordingly no  
19 response is required. To the extent the allegations require a response, Sidley lacks  
20 information or knowledge sufficient to form a belief as to the truth of the  
21 allegations, and on that basis denies them.

22 **EIGHTH CLAIM FOR RELIEF**

23 **(Unjust Enrichment – Against Lane)**

24 240. Sidley incorporates by reference his responses to paragraphs 1 through  
25 239 as though set forth in full.

26 241. Sidley is not named as a defendant to this Claim and accordingly no  
27 response is required. To the extent the allegations require a response, Sidley lacks  
28 information or knowledge sufficient to form a belief as to the truth of the

1 allegations, and on that basis denies them.

2 242. Sidley is not named as a defendant to this Claim and accordingly no  
3 response is required. To the extent the allegations require a response, Sidley lacks  
4 information or knowledge sufficient to form a belief as to the truth of the  
5 allegations, and on that basis denies them.

6 243. Sidley is not named as a defendant to this Claim and accordingly no  
7 response is required. To the extent the allegations require a response, Sidley lacks  
8 information or knowledge sufficient to form a belief as to the truth of the  
9 allegations, and on that basis denies them.

10 244. Sidley is not named as a defendant to this Claim and accordingly no  
11 response is required. To the extent the allegations require a response, Sidley lacks  
12 information or knowledge sufficient to form a belief as to the truth of the  
13 allegations, and on that basis denies them.

14 245. Other than as expressly and specifically admitted above in the  
15 response to Paragraphs 1-244, Sidley denies every allegation of the Second  
16 Amended Complaint.

17 **AFFIRMATIVE DEFENSES**

18 As and for his defenses, Sidley alleges as follows and reserves the right to  
19 assert additional defenses in the event that discovery indicates they would be  
20 appropriate.

21 **FIRST AFFIRMATIVE DEFENSE**

22 **(Consent, Approval, Acquiescence, Participation, Ratification)**

23 246. The Second Amended Complaint, and each cause of action alleged  
24 therein against Sidley, is barred, in whole or in part, because of NCUA's own  
25 consent approval, acquiescence, participation and/or ratification at any time in any  
26 activity that NCUA challenges as improper. In addition, the claims against Sidley  
27 are barred because the acts stated were ratified or approved by other state and  
28 federal agencies or entities.

1           247. NCUA's Office of Corporate Credit Unions ("OCCU") provided  
2 supervision and oversight of WesCorp, including its investment strategies and risk  
3 assessment. This supervision was done, among other ways, through an on-site  
4 examiner who was physically located at WesCorp's facilities on a full-time basis,  
5 examining WesCorp's activities. The OCCU examiner's efforts resulted in yearly  
6 examination reports, analyzing and assessing WesCorp's operations, including but  
7 not limited to its investment strategies and risk assessment.

8           248. In addition, the NCUA's Office of Capital Markets ("OCM") provided  
9 assistance to NCUA's OCCU examiner by, among other things, helping to evaluate  
10 WesCorp's investments and related asset and liability issues.

11          249. As a result of NCUA's constant oversight and examination efforts,  
12 NCUA was, upon information and belief, at all times aware of WesCorp's  
13 monitoring and risk-protection efforts and, upon further information and belief,  
14 consistently approved of WesCorp's efforts. WesCorp's efforts which NCUA,  
15 upon information and belief, knew of and approved of included, among other  
16 things: (i) limiting investments to primarily high grade securities with AA and  
17 AAA ratings; (ii) conducting thorough credit reviews or proposed security  
18 purchases prior to purchasing; (iii) conducting credit reviews on newly-issued  
19 security types; (iv) conducting annual credit reviews on existing securities; (v)  
20 preparing monthly watch lists for, and keeping appropriate oversight of, securities  
21 that were not performing well; (vi) creating concentration limits as to individual  
22 issues; (vii) creating concentration limits as to different security types; and (viii)  
23 publishing monthly reports on credit status and providing the WesCorp Board with  
24 substantial information regarding concentration limits and credit enhancement  
25 levels on WesCorp's security portfolios.

26          250. NCUA, through its oversight and examination efforts, was, upon  
27 information and belief, also aware of the fact that Option ARM MBSs were not a  
28 "new" security type that WesCorp began investing in. NCUA regulations and

1 WesCorp policies refer to “new” security types as those securities which have  
2 different collateral than other securities. As NCUA was aware at all relevant times,  
3 WesCorp had a long history of purchasing securities with the same type of  
4 collateral – mortgages – as Option ARM MBSs. Upon information and belief,  
5 NCUA and OCCU examiners ratified WesCorp’s investment in Option ARM  
6 MBSs and never suggested that Option ARM MBSs were a “new” security type  
7 which WesCorp should review as such.

8 251. NCUA, though its OCCU examiners, the OCCU examination reports  
9 and other efforts and statements, consistently approved of WesCorp’s investment  
10 strategies and investment concentrations, including WesCorp’s investments in  
11 Option ARM MBSs.

12 252. Prior to its involvement in this lawsuit, NCUA never made any claims  
13 that WesCorp’s investment strategies violated NCUA regulations or WesCorp  
14 policies. Similarly, the OCCU examination reports never made such suggestions.

15 253. NCUA at all times, upon information and belief, approved of  
16 WesCorp’s investment strategies, policies and procedures.

17 254. NCUA also, upon information and belief, approved of WesCorp’s risk  
18 assessment efforts. In those instances, to the extent there were any, where NCUA,  
19 through the OCCU examination reports, raised any concerns regarding WesCorp’s  
20 risk assessment efforts, WesCorp promptly addressed those concerns and NCUA  
21 subsequently, in later OCCU examination reports and/or through other statements  
22 or actions, approved of WesCorp’s efforts.

23 255. WesCorp in fact, upon information and belief, promptly addressed any  
24 concerns raised by NCUA in an OCCU examination report and, upon information  
25 and belief, obtained subsequent approval from NCUA of those efforts.

26 256. In at least 2006 and 2007, after the investments at issue in NCUA’s  
27 complaint were made, NCUA continued to approve of WesCorp’s management,  
28 risk assessment and ability to operate within regulatory limits.

1       257. Further, Sidley is informed and believes that NCUA granted WesCorp  
2 the highest level of expanded investment authority given to any corporate credit  
3 union, including but not limited to the authority to invest in securities rated as low  
4 as BBB, although WesCorp never invested, upon information and belief, in  
5 securities rater lower than AA.

6       258. In light of the foregoing, NCUA knowingly ratified and approved of  
7 the policies, strategies and actions which are now complained of in the Second  
8 Amended Complaint.

## **SECOND AFFIRMATIVE DEFENSE**

## **(Failure to State a Claim)**

1        259. Sidley incorporates by reference and realleges each and every  
2 allegation contained in paragraphs 246-258 as though fully set forth herein.

3       260. The Second Amended Complaint, and each cause of action alleged  
4 therein against Sidley, fails to state facts sufficient to constitute a claim upon which  
5 relief can be granted.

### **THIRD AFFIRMATIVE DEFENSE**

## **(Business Judgment Rule)**

8           261. Sidley incorporates by reference and realleges each and every  
9 allegation contained in paragraphs 246-258 as though fully set forth herein.

0        262. The Second Amended Complaint, and each cause of action alleged  
1 therein against Sidley, is barred by the business judgment rule.

## **FOURTH AFFIRMATIVE DEFENSE**

## **(Comparative Negligence)**

4           263. Sidley incorporates by reference and realleges each and every  
5 allegation contained in paragraphs 246-258 as though fully set forth herein.

26           264. The NCUA's recovery, if any, must be reduced to the extent that its  
27 injuries, losses and/or damages, if any, were caused by the NCUA's own  
28 negligence.

## **FIFTH AFFIRMATIVE DEFENSE (Standing)**

265. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

266. The Second Amended Complaint, and each and every cause of action alleged therein against Sidley, is barred, in whole or in part, because NCUA lacks standing to assert the claims alleged in this action.

## SIXTH AFFIRMATIVE DEFENSE

**(Loyalty, Prudent Person, Candor, Good Faith)**

267. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

268. The Second Amended Complaint, and each cause of action alleged therein against Sidley, is barred, in whole or in part, because at all times Sidley acted prudently, honestly, in good faith, with full candor, and in the best interest of WesCorp.

## **SEVENTH AFFIRMATIVE DEFENSE**

#### **(Due Diligence and Reasonable Investigation)**

269. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

270. The Second Amended Complaint, and each cause of action alleged therein against Sidley, is barred, in whole or in part, because each and every act and omission by Sidley was made after reasonable investigation, and Sidley had reasonable grounds to believe, and did believe, that such acts or omissions were prudent given the circumstances.

## **EIGHTH AFFIRMATIVE DEFENSE**

## **(Reliance on Others)**

271. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

1       272. The Second Amended Complaint, and each cause of action alleged  
2 therein against Sidley, is barred, in whole or in part, because every act or omission  
3 by Sidley alleged in the Second Amended Complaint, if it occurred at all, was made  
4 or occurred in reasonable good faith reliance on the statements and representations  
5 of others upon which Sidley was entitled to rely.

## NINTH AFFIRMATIVE DEFENSE

### **(Reliance on Professionals)**

8       273. Sidley incorporates by reference and realleges each and every  
9 allegation contained in paragraphs 246-258 as though fully set forth herein.

10           274. The Second Amended Complaint, and each cause of action alleged  
11 therein against Sidley, is barred, in whole or in part, because Sidley relied in good  
12 faith upon the professional judgments of WesCorp's professionals, as well as its  
13 inside and outside auditors, investment bankers and ratings agencies and counsel at  
14 the time of the alleged acts concerning matters which he reasonably believed to be  
15 within such persons' professional or expert competence.

## **TENTH AFFIRMATIVE DEFENSE**

### **(Conduct of Others)**

18           275. Sidley incorporates by reference and realleges each and every  
19 allegation contained in paragraphs 246-258 as though fully set forth herein.

20        276. The Second Amended Complaint, and each cause of action alleged  
21 therein against Sidley, is barred, in whole or in part, to the extent NCUA purports to  
22 hold Sidley responsible for alleged breaches of fiduciary duties, negligence, or  
23 conduct engaged in, by third-parties or other defendants, including but not limited  
24 to rating agencies, lenders and issuers.

## **ELEVENTH AFFIRMATIVE DEFENSE**

## **(Indemnification, Contribution and Proportionate Liability)**

27           277. Sidley incorporates by reference and realleges each and every  
28 allegation contained in paragraphs 246-258 as though fully set forth herein.

1       278. Without in any way admitting that NCUA has suffered any loss as  
2 alleged in the Second Amended Complaint, to the extent any loss has been  
3 sustained, Sidley is entitled to indemnification and/or contribution from others,  
4 named or unnamed in this action, relating to such alleged losses, including but not  
5 limited to indemnification from co-defendants who caused or contributed to  
6 damages allegedly incurred and from plaintiff NCUA pursuant to the California  
7 Labor Code or other applicable laws.

## **TWELFTH AFFIRMATIVE DEFENSE**

### **(Apportionment)**

10           279. Sidley incorporates by reference and realleges each and every  
11 allegation contained in paragraphs 246-258 as though fully set forth herein.

12        280. Without admitting that NCUA suffered damages in any amount, or that  
13 Sidley or any defendant is or should be liable for any such damages, Sidley asserts  
14 that his liability and the liability of any other responsible persons, named or  
15 unnamed, should be apportioned according to their relative degrees of fault, and  
16 any alleged liability of Sidley should be reduced accordingly.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Injury to Plaintiff)**

19           281. Sidley incorporates by reference and realleges each and every  
20 allegation contained in paragraphs 246-258 as though fully set forth herein.

21       282. The Second Amended Complaint, and each cause of action alleged  
22 therein against Sidley, is barred, in whole or in part, because NCUA has not  
23 suffered any legally cognizable injury or damage.

## **FOURTEENTH AFFIRMATIVE DEFENSE (No Causation)**

26 283. Sidley incorporates by reference and realleges each and every  
27 allegation contained in paragraphs 246-258 as though fully set forth herein.

28 | 284. The Second Amended Complaint, and each cause of action alleged

1 therein against Sidley, is barred, in whole or in part, because Sidley did not directly  
2 or indirectly cause the alleged damages complained of in the Second Amended  
3 Complaint.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 **(Intervening or Superseding Cause)**

6 285. Sidley incorporates by reference and realleges each and every  
7 allegation contained in paragraphs 246-258 as though fully set forth herein.

8 286. The Second Amended Complaint, and each cause of action alleged  
9 therein against Sidley, is barred, in whole or in part, because NCUA's alleged  
10 damages, if any, were the result of one or more intervening or superseding causes  
11 or caused by the acts and/or failures to act of persons and/or entities other than  
12 Sidley, and were not the result of any act or omission on the part of Sidley.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 **(Macroeconomic Factors)**

15 287. Sidley incorporates by reference and realleges each and every  
16 allegation contained in paragraphs 246-258 as though fully set forth herein.

17 288. The Second Amended Complaint, and each cause of action alleged  
18 therein against Sidley, is barred, in whole or in part, because NCUA's injuries or  
19 damages, to the extent they exist, were caused by supervening events unconnected  
20 to Sidley, including macroeconomic and mortgage industry events that constrained  
21 WesCorp's access to the credit and capital markets and affected its liquidity.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(Laches)**

24 289. Sidley incorporates by reference and realleges each and every  
25 allegation contained in paragraphs 246-258 as though fully set forth herein.

26 290. The Second Amended Complaint, and each cause of action alleged  
27 therein against Sidley, is barred, in whole or in part, by the doctrine of laches.  
28 //

## **EIGHTEENTH AFFIRMATIVE DEFENSE (Waiver)**

291. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

292. The Second Amended Complaint, and each cause of action alleged therein against Sidley, is barred, in whole or in part, by the doctrine of waiver.

# NINETEENTH AFFIRMATIVE DEFENSE (Estoppel)

293. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

294. The Second Amended Complaint, and each cause of action alleged therein against Sidley, is barred, in whole or in part, by the doctrine of estoppel because WesCorp complied with the NCUA's regulations and directives and/because WesCorp's investments were reviewed and approved by the NCUA and its examiners and therefore, by its words, actions and failures to act, NCUA is equitably estopped from asserting each of the purported causes of action alleged in the Complaint and/or from obtaining any of the relief sought thereby.

# **TWENTIETH AFFIRMATIVE DEFENSE**

**(*In Pari Delicto*, Unclean Hands)**

295. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

296. The Second Amended Complaint, and each cause of action alleged therein against Sidley, is barred, in whole or in part, by the doctrines of *in pari delicto* and/or unclean hands.

# **TWENTY-FIRST AFFIRMATIVE DEFENSE**

## **(Statute of Limitations)**

297. Sidley incorporates by reference and realleges each and every allegation contained in paragraphs 246-258 as though fully set forth herein.

1       298. The Second Amended Complaint, and each cause of action alleged  
2 therein against Sidley, is barred, in whole or in part, because of the applicable  
3 statute(s) of limitations and/or period(s) of repose.

## **TWENTY-SECOND AFFIRMATIVE DEFENSE**

## **(Unjust Enrichment)**

6 299. Sidley incorporates by reference and realleges each and every  
7 allegation contained in paragraphs 246-258 as though fully set forth herein.

8           300. The Second Complaint, and each cause of action alleged therein  
9 against Sidley, is barred, in whole or in part, because NCUA would be unjustly  
10 enriched if it were allowed to recover in this action. Furthermore, without  
11 admitting that NCUA has suffered any loss as a result of an act or omission alleged  
12 in the Second Amended Complaint, any damages awarded in connection with the  
13 claims asserted in this action are offset and/or must be reduced by the amount of the  
14 tax benefit accruing to NCUA, by virtue of its deduction of capital loss, in order to  
15 prevent unjust enrichment.

## **TWENTY-THIRD AFFIRMATIVE DEFENSE**

## **(No Entitlement to Compensatory Damages)**

18 301. Sidley incorporates by reference and realleges each and every  
19 allegation contained in paragraphs 246-258 as though fully set forth herein.

20           302. NCUA is not entitled to recover the compensatory damages requested  
21 in the Second Amended Complaint.

## **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(No Entitlement to Exemplary or Punitive Damages)**

24           303. Sidley incorporates by reference and realleges each and every  
25 allegation contained in paragraphs 246-258 as though fully set forth herein.

304. NCUA is precluded from recovering exemplary or punitive damages,  
either in whole or in part, from Sidley under the applicable provisions of the law,  
including, without limitation, California Civil Code section 3294, the United States

1 Constitution and/or the California Constitution.

2 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

3 **(No Entitlement to Costs of Litigation)**

4 305. Sidley incorporates by reference and realleges each and every  
5 allegation contained in paragraphs 246-258 as though fully set forth herein.

6 306. NCUA is not entitled to recover its costs and expenses incurred in this  
7 action, including, without limitation, attorneys' fees, from Sidley.

8 **COUNTERCLAIMS**

9 For counterclaims, Sidley alleges as follows:

10 **Jurisdiction**

11 307. The Court has supplemental jurisdiction over these counterclaims  
12 under 28 U.S.C. § 1337(a), because these counterclaims and the purported claims  
13 alleged by NCUA all form part of the same case or controversy concerning the  
14 parties' rights and responsibilities related to Defendants' service as officers of  
15 WesCorp.

16 **Parties**

17 308. Counterclaimant Sidley served as Vice President for Risk Assessment  
18 for WesCorp from on or about June 18, 1998, and as Chief Risk Officer in charge  
19 of investment credit services for WesCorp from on or about October 3, 2006. On or  
20 about June 9, 2009, Sidley ceased serving as both Vice President for Risk  
21 Assessment and as Chief Risk Officer and began serving as Vice President of  
22 Strategic Projects, a role he held until he retired from WesCorp on April 2, 2010.  
23 Sidley reported to WesCorp's Supervisory Committee, which was akin to a  
24 corporate audit committee. Sidley reported to the Supervisory Committee to  
25 maintain his independence because his role at WesCorp was not non-managerial,  
26 and his department was tasked with risk assessment, not risk management.

27 309. Counter-defendant National Credit Union Administration Board as  
28 Liquidator of Western Corporate Federal Credit Union ("NCUA") is the liquidating

1 agent of WesCorp.

2 **Factual Allegations**

3 **Policy 21**

4 310. WesCorp's Board of Directors adopted a resolution regarding  
5 indemnification and insurance, codified in WesCorp's book of policies as "Policy  
6 21."

7 311. WesCorp agreed in Policy 21 to indemnify WesCorp's current and  
8 former "officials" and "employees," including directors and officers, "to the  
9 maximum extent permitted by either" California law or the Model Business  
10 Corporation Act ("MBCA"). This agreement included indemnity "for any liability  
11 asserted against [the current and former officials and employees] in connection with  
12 judicial or administrative proceedings, formal or informal, to which they are or may  
13 become parties by reason of the performance of their official duties."

14 312. WesCorp also agreed in Policy 21 that this promise to indemnify  
15 "shall" include the costs and attorneys' fees incurred to secure indemnity, whether  
16 or not litigation is commenced.

17 313. WesCorp also agreed in Policy 21 to purchase and maintain insurance  
18 on behalf of current and former directors and officers "against any liability asserted  
19 against them and expenses reasonably incurred by them in their official capacities  
20 and arising out of the performance of their official duties to the extent such  
21 insurance is permitted by the applicable state law or the Model Business  
22 Corporation Act."

23 **The CUMIS Policy**

24 314. WesCorp purchased an insurance policy from CUMIS Insurance  
25 Society, Inc. ("CUMIS"), Special Insurance Package No. 065468-22 (the "CUMIS  
26 Policy"), effective January 1, 2009.

27 315. On or about November 30, 2009, Jeb Burbott, counsel for WesCorp,  
28 and John Cannerday, NCUA counsel, sent a letter to CUMIS tendering the defense

1 of this suit under the CUMIS Policy as to Sidley and several other WesCorp  
2 employees then-named as defendants in this action.

3 316. On December 28, 2009, CUMIS sent a letter to Mr. Burbott and Mr.  
4 Cannerday denying that CUMIS has a “duty to defend” under the CUMIS Policy  
5 and denying coverage for losses.

6 317. CUMIS agreed that the allegations of the complaint – breach of duties  
7 in the discharge of Counterclaimants’ duties as directors and employees of  
8 WesCorp – were the type of “claims” for “losses” related to a “wrongful act” that  
9 are covered by the terms of the Policy.

10 318. However, CUMIS claimed that it does not have a “duty to defend”  
11 under the CUMIS Policy, which states that “CUMIS has no duty to defend . . . or to  
12 pay any ‘defense costs’ prior to the final adjudication or disposition of any ‘claim’ .  
13 . . .”

14 319. CUMIS also refused to cover any losses suffered by Sidley under the  
15 investment exclusion of the CUMIS Policy. The CUMIS Policy provides that  
16 “CUMIS will not be liable to make any payment for ‘loss’ in connection with or  
17 arising out of any ‘claim’ . . . . Based upon or resulting directly or indirectly from  
18 investments . . . [or] investment or trading losses . . . .” Because the claims in this  
19 suit arise out of alleged investment losses related to the purchase of mortgage back  
20 securities, CUMIS invoked the exclusion to deny coverage for defense costs and  
21 losses that may arise out of the litigation.

22 320. The CUMIS Policy has only one limited exception to the investment  
23 exclusion. The CUMIS Policy contains a provision requiring payment of defense  
24 costs for investment-related claims up to an aggregate amount of \$100,000 for all  
25 insureds, subject to a \$500,000 deductible. CUMIS accordingly agreed to provide  
26 coverage for Sidley’s defense costs between \$500,000 and \$600,000 incurred in this  
27 suit.

28 //

## **NCUA's Denial of Advancement**

321. All of the claims asserted by the NCUA against Sidley in this litigation arise out of his performance of official duties as an officer and employee of WesCorp.

322. Sidley has incurred, and continues to incur, attorneys' fees and costs in connection with his defense against the claims asserted by the NCUA as Liquidating Agent for WesCorp in this litigation.

323. In or about December 2009, Sidley's counsel sent a letter to the NCUA requesting that the NCUA as conservator of WesCorp indemnify and advance the defense costs of Sidley and several other WesCorp officers and employees also being represented by Sidley's counsel (those other officers and employees are no longer parties to this action) pursuant to Policy 21.

324. On January 5, 2010, NCUA's counsel sent a letter stating that NCUA, at that time acting as conservator for WesCorp, "does not believe that it has any obligation to advance defense costs or to agree to indemnify the Employees at this time for the claims made in the Action." NCUA's counsel went on to state: "However, the Conservator [NCUA], in its discretion agrees to advance reasonable defense costs on behalf of the Employees [including Sidley] for the present time." NCUA's counsel further stated: "In the event the Conservator determines that it will proceed against some or all of the Employees in the Action, advancement of defense costs will be reconsidered and will likely cease at that time" and that "[w]hether the conservator provides indemnification will be determined once the matter is resolved."

325. On October 28, 2010, following NCUA's filing of an Amended Complaint in this action, NCUA's counsel sent a letter to Sidley's counsel. Citing its earlier letter, NCUA's counsel stated that the "NCUA Board as Liquidating Agent for WesCorp has not assumed any obligations of WesCorp relating to the indemnification of its former employees and will not advance any defense costs

1 incurred by Mr. Sidley.”

2 **FIRST COUNTERCLAIM: INDEMNIFICATION UNDER POLICY 21**

3 326. Sidley incorporates by reference and realleges each and every  
4 allegation contained in paragraphs 307-325 as though fully set forth herein.

5 327. WesCorp agreed in Policy 21 to indemnify Sidley “to the maximum  
6 extent permitted by either” California law *or* the MBCA.

7 328. Sidley demands indemnity under Policy 21 to the fullest extent  
8 permissible under either California law or the MBCA and/or defense costs to the  
9 fullest extent permissible under either California law or the MBCA.

10 329. Sidley also demands recovery of costs and attorneys fees incurred to  
11 secure the indemnity provided for in Policy 21.

12 330. If NCUA refuses to indemnify Sidley pursuant to Policy 21, Sidley  
13 will suffer damages in an amount to be determined.

14 **SECOND COUNTERCLAIM: INDEMNIFICATION UNDER CALIFORNIA  
15 LABOR CODE § 2802**

16 331. Sidley incorporates by reference and realleges each and every  
17 allegation contained in paragraphs 307-325 as though fully set forth herein.

18 332. At all relevant times, Sidley was an employee of Wescorp.

19 333. Section 2802 of the California Labor Code provies that an employer  
20 “shall indemnify his or her employee for all necessary expenditures or losses  
21 incurred by the employee in direct consequence of the discharge of his or her  
22 duties.”

23 334. NCUA as liquidator of WesCorp is therefore obliged to indemnify and  
24 reimburse Sidley for his defense costs as incurred in this litigation under the  
25 California Labor Code § 2802.

26 335. Sidley has incurred and paid attorneys’ fees and costs in defense of the  
27 claims asserted by the NCUA as liquidated of WesCorp in this litigation.

28 336. Since on or about October 28, 2010, the NCUA has failed to reimburse

1 Sidley for the attorneys' fees and costs he has incurred and paid to date.

2 337. Sidley has incurred, and will continue to incur, damages as a result of  
3 the NCUA's failure to reimburse him for his attorneys' fees and costs.

4 **THIRD COUNTERCLAIM: DECLARATORY RELIEF**

5 338. Sidley incorporates by reference and realleges each and every  
6 allegation contained in paragraphs 307-325 as though fully set forth herein.

7 339. The NCUA is obligated to advance Sidley his attorneys' fees and costs  
8 incurred in his defense of this litigation under, at least, Policy 21, the MBCA and  
9 California Labor Code 2802. However, the NCUA has refused to advance Sidley  
10 his attorneys' fees and costs incurred in defense of this litigation and, as such, a

11 340. Further, WesCorp promised in Policy 21 to "purchase and maintain"  
12 insurance "against any liability asserted against" Sidley.

13 341. The Policy that WesCorp purchased was inadequate to fulfill this  
14 promise. As directors and officers of WesCorp, Sidley's primary responsibilities  
15 included advising the directors regarding investment-related. Loss related to  
16 investments was a likely source of liability for Sidley.

17 342. Despite the risk of claims related to investment losses, WesCorp  
18 purchased the CUMIS Policy knowing that it contained an exclusion for claims  
19 related to investment losses and only covered investment related claims defense  
20 costs between \$500,000 and \$600,000.

21 343. Because the CUMIS Policy does not cover Sidley for "any liability"  
22 related to an investment claim, WesCorp breached the promise to provide insurance  
23 coverage for Sidley in Policy 21.

24 344. Because CUMIS invoked the investment exclusion to deny most  
25 coverage to Sidley, but for WesCorp's failure to comply with its obligations and  
26 obtain adequate insurance coverage, Sidley would have been covered for all of the  
27 costs and claims related to this litigation.

28 345. An actual existing and bona fide controversy exists between the parties

1 as to to NCUA's liability for advancement and indemnification of Sidley's  
2 attorneys' fees and costs incurred in his defense of this litigation.

3 346. Policy 21 promises to maintain insurance coverage for "any liability"  
4 asserted against Sidley, yet the CUMIS Policy does not cover the current action.

5 347. Further, NCUA has declined to pay for, advance or indemnify Sidley's  
6 defense costs.

7 348. The rights of the parties under Policy 21, the MBCA and California  
8 Labor Code § 2802 can be determined only by declaratory relief.

9 **PRAYER**

10 WHEREFORE, Sidley prays for judgment against plaintiffs as  
11 follows:

12 1. That plaintiff takes nothing by the Complaint and that the Complaint  
13 be dismissed with prejudice.

14 2. That judgment be entered in favor of Sidley and against plaintiff.

15 3. That Sidley be awarded damages on its counterclaims, in amounts to  
16 be determined at trial.

17 4. That the Court adjudge and declare that NCUA is obligated to pay to  
18 the fullest extent any liability incurred by Sidley because of the inadequate  
19 insurance policy purchased by WesCorp in breach of its promise to purchase and  
20 maintain insurance under Policy 21.

21 6. That Sidley be awarded his costs and reasonable attorneys' fees.

22 7. That Sidley be granted such other and further relief as the Court may  
23 deem just and proper.

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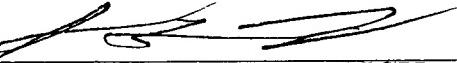
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1 DATED: August 25, 2011

Kent B. Goss  
Seth E. Freilich  
ORRICK, HERRINGTON & SUTCLIFFE LLP

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4 By:

  
SETH E. FREILICH

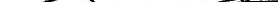
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6 Attorneys For Defendant  
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TIMOTHY T. SIDLEY

## **DEMAND FOR JURY TRIAL**

Defendant and Counterclaimant Timothy T. Sidley hereby demands a trial by jury for all claims and issues so triable in this action.

DATED: August 24, 2011

Kent B. Goss  
Seth E. Freilich  
ORRICK, HERRINGTON & SUTCLIFFE LLP

By:  SETH E. FREILICH

Attorneys For Defendant  
**TIMOTHY T. SIDLEY**

**PROOF OF SERVICE**

I am more than eighteen years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 777 South Figueroa Street, Suite 3200, Los Angeles, California 90017. On August 25, 2011, I served the following document(s):

DEFENDANT TIMOTHY T. SIDLEY'S AMENDED ANSWER (TO  
SECOND AMENDED COMPLAINT) AND COUNTERCLAIMS

## On the interested parties by

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
  - By depositing a true and correct copy of the document(s) listed above with Fed Ex in Los Angeles, California, enclosed in a sealed envelope.
  - (by Electronic Mail), I caused such documents to be transmitted by electronic mail to the offices of the addressee.

**SEE ATTACHED SERVICE LIST**

I am employed in the county from which the mailing occurred. On the date indicated above, I placed the sealed envelope(s) for collection and mailing at this firm's office business address indicated above. I am readily familiar with this firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the firm's correspondence would be deposited with the United States Postal Service on this same date with postage thereon fully prepaid in the ordinary course of business.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 2011 at Los Angeles, California.

Norma Sweeney

Norma Sweeney

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